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DEALERS ASSOCIATION

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
CALIFORNIA NEW CAR DEALERS
ASSOCIATION,

Protestant,

v.

JAGUAR LAND ROVER NORTH
AMERICA, LLC,

Respondent.

PROTEST NO.

**PROTEST PURSUANT TO VEHICLE
CODE SECTION 3085**

Protestant, CALIFORNIA NEW CAR DEALERS ASSOCIATION, a California non-profit mutual benefit corporation ("Association" or "Protestant"), through its attorneys, hereby files this Protest pursuant to Vehicle Code section 3085 and alleges as follows:

1. Protestant is an association as defined in Vehicle Code section 3085(b). By this Protest, the Association is challenging the legality of the export prohibition policy of JAGUAR LAND ROVER NORTH AMERICA, LLC, ("JLRNA" or "Respondent") under subdivision (y) of Vehicle Code section 11713.3. The Association's members include well in excess of two (2) and in fact approximately twenty-five (25) JLRNA franchisees, each of whom are subject to the policy being challenged (the "Impacted Dealers") and Protestant is bringing this Protest on their

1 behalf. Protestant's mailing address is 1517 L Street, Sacramento, California 95814, and its
2 telephone number is (916) 441-2599.

3 2. Respondent is a licensed distributor authorized to do business and doing business
4 in the State of California. Respondent's mailing address is 555 MacArthur Boulevard, Mahwah,
5 New Jersey 07430 and Respondent's telephone number is (210) 818-8500.

6 3. Protestant is represented in this matter by Arent Fox LLP by Halbert B.
7 Rasmussen whose address is 555 West Fifth Street, 48th Floor, Los Angeles, California 90013 and
8 whose telephone number is (213) 443-7689.

9 4. Respondent maintains an export and sale-for-resale prohibition policy (the
10 "JLRNA Policy") that it enforces and/or threatens to enforce against its dealers, including the
11 Impacted Dealers. Among other policies, terms, and conditions, the JLRNA Policy includes the
12 terms and provisions of that certain document entitled "Jaguar Land Rover North America, LLC
13 Export Policy Update December 9, 2015," a true and correct copy of which is attached hereto as
14 Exhibit "A."

15 5. The JLRNA Policy does not comply with and thereby violates the provisions of
16 subdivision (y) of Vehicle Code Section 11713.3, which violations include, but are not limited to,
17 the following:

18 (a) Subdivision (y)(3) of Vehicle Code section 11713.3 provides in pertinent part
19 that "[a]n export or sale-for-resale prohibition policy shall expressly include a provision
20 stating the dealer's rebuttable presumption [created in Subdivision (y)(1)] if the dealer
21 causes the vehicle to be registered in this or any other state and collects or causes to be
22 collected any applicable sales or use tax." In violation of this provision, the JLRNA
23 Policy omits any reference to the presumption;

24 (b) Subdivision (y)(1) of Vehicle Code section 11713.3 prohibits the franchisor
25 from taking or threatening to take adverse action against a dealer pursuant to an export or
26 sale-for-resale prohibition because a customer of the dealer exported or sold a vehicle for
27 resale unless the dealer knew or reasonably should have known of the customer's intent to
28

1 export or resell contrary to the prohibition. In violation of this provision, the JLRNA
2 Policy provides that all dealers who exceed a quarterly numeric threshold of exported
3 vehicles “will now be selected for a Step 2 Sales Incentive Audit of any and all of its sales
4 transactions.” By imposing or threatening to impose the significant adverse action of a
5 top-to-bottom sales audit without regard to the dealer’s knowledge or constructive
6 knowledge concerning exporting or sales for resale, the JLRNA Policy clearly provides
7 for and threatens adverse action in violation of Subdivision (y)(1) of Vehicle Code section
8 11713.3;

9 (c) Subdivision (y)(2) of Vehicle Code section 11713.3 prohibits an export or sale-
10 for-resale prohibition policy from expressly or implicitly requiring a dealer to make
11 further inquiries into a customer’s intent, identity, or financial ability to purchase or lease
12 a vehicle based on any of the customer’s characteristics listed or defined in Section 51, the
13 Unruh Civil Rights Act, which characteristics include sex, race, color, religion, ancestry,
14 national origin, disability, medical condition, genetic information, marital status, sexual
15 orientation, citizenship, primary language, or immigration status. In violation of this
16 provision and in violation of the provisions of subdivision (y)(1), discussed above, the
17 JLRNA Policy requires the dealer to exercise “an adequate level of due diligence” and
18 provides a lengthy and non-exclusive list of procedures and “red flags” for the dealer to
19 observe, including making further inquiry where the customer has connections to
20 international businesses, uses internationally sourced funds, or does not have a U.S.
21 driver’s license among other proxies for a person’s citizenship, immigration status, and
22 other protected characteristics. In doing so, the policy imposes inquiry requirements
23 prohibited by subdivision (y)(2). Moreover, and independent of subdivision (y)(2), in
24 doing so, the policy imposes or threatens to impose adverse action based on non-
25 compliance with JLRNA imposed checklists, red flags, and standards of scienter that
26 substantially differ from the prerequisite to adverse action of dealer knowledge or
27 constructive knowledge mandated by subdivision (y)(1).

1 6. Protestant and its attorneys desire to appear before the Board and to have a hearing
2 on this Protest, it being estimated that the time required for a hearing will be approximately 3
3 days.

4 7. Protestant requests a prehearing conference.

5
6 WHEREFORE, Protestant prays for relief as follows:

7 1. That the New Motor Vehicle Board hold a hearing and based on the evidence and
8 proof produced therein determine, and thereupon issue a declaration that the export and sale-for-
9 resale prohibition policy of Respondent violates the prohibitions of subdivision (y) of Vehicle
10 Code section 11713.3.

11 2. For such other rulings and relief as the Board deems just and equitable.

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13 Dated: February 9, 2016

Arent Fox, LLP

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15 By: _____

16 Halbert B. Rasmussen
17 Attorneys for Protestant
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EXHIBIT A



Jaguar Land Rover North America, LLC

JAGUAR LAND ROVER NORTH AMERICA, LLC EXPORT POLICY UPDATE DECEMBER 9, 2015

Since the implementation of the November 24, 2014 Export and Broker Policy (JOGI14-88 and OGI14-88), Jaguar Land Rover North America, LLC ("JLRNA") has seen a decrease of vehicles exported from the U.S. In recognition of the retailer network's efforts in curbing vehicle exports, JLRNA is pleased to announce Amendments to the Enforcement of the Export and Broker Policy (the "Amendments" or "Amended Export Policy").

SUMMARY OF THE AMENDMENTS

- JLRNA will no longer automatically chargeback a retailer for exceeding its quarterly export threshold.
- A retailer exceeding its quarterly export threshold will now be selected for a Step 2 sales incentive audit of any and all of its sales transactions.
- JLRNA will be applying a due diligence standard in auditing exported VINs. A retailer who fails to conduct an adequate level of due diligence in a sale to an exporter or broker is a violation of this Amended Export Policy.
- These Amendments are retroactive to November 24, 2014.
- All retailers who exceed their annual 2015 export threshold will be subject to an audit. Beginning on January 1, 2016, JLRNA will measure retailers against their quarterly export threshold in auditing retailers.

QUARTERLY THRESHOLD

JLRNA will no longer automatically chargeback a retailer for exceeding its quarterly export threshold (for retailers at or above 250 annual vehicle sales, no more than 3% of a retailer's sales volume in a quarter may be exported; for retailers below 250 annual vehicle sales, no more than 2 vehicles per quarter may be exported).

Any retailer who exceeds its quarterly export threshold will now be selected for a Step 2 audit of its sales transactions, including but not limited to the exported VINs. The audit will include a review of the sales transactions for, among other things, compliance with this Amended Export Policy, the Contests and Incentives Standard Eligibility Rules for Retail Programs, and the Business Builder Program. The Step 2 audit may include VINs that were sold before and after the quarter in which the retailer exceeded its export threshold.



Jaguar Land Rover North America, LLC

The quarterly threshold measurement methodology will remain unchanged.

Nothing in this Amended Export Policy shall restrict or limit JLRNA's ability to audit a retailer for any other reason. Completion of an audit under the Amended Export Policy does not exempt a retailer from being audited again at any time.

RETAILER DUE DILIGENCE

A retailer who fails to conduct an adequate level of due diligence in a sale to an exporter or broker is a violation of this Amended Export Policy. All retailer due diligence efforts, including proof of payment, at the time of sale must be retained in the deal jacket.

Retailers should check any sales transactions against the names and addresses on the Known Exporter List and the Prospect Research Tool to ensure that they are not making a sale which could potentially be exported. The Known Exporter List and the Prospect Research Tool are not intended to, and do not, restrict to a whom a vehicle may be sold, which is subject to a retailer's discretion.

For your reference, we have re-attached the Retailer Due Diligence and Best Practices and Indicators of Potential Export of Broker Behavior to this Amended Export Policy. Please note that the information in these documents are retailer observations and learnings that JLRNA is sharing with the retailer network.

PENALTIES

All exported vehicles in which a retailer failed to exercise an adequate level of due diligence will be subject to the below penalties:

- Chargeback of the full margin (13.5% of the vehicle's MSRP) on the exported vehicle
- Chargeback of \$3,500 which reflects a blended average of the new vehicle warranty cost across the specific brand's model lines and loss parts revenue
- Chargeback of all incentives, including variable marketing and stair-step incentives
- 2 for 1 allocation penalty charged back during next order call



Jaguar Land Rover North America, LLC

- If the total number of Business Builder violations, including exports, identified is equal to or exceeds 10% of the total retail transactions in a given quarter, the retailer will be required to repay the all Business Builder payments made to the retailer in that quarter.

JLRNA further reserves all of its rights and remedies for violations of the Amended Export Policy, including, among other things, termination of the Dealer Agreement.

ANNUAL EARN BACK OPPORTUNITY

There will not be an annual earn back opportunity for retailers under this Amended Export Policy.

VEHICLE EXPORT DETERMINATION

Exports are defined as any Land Rover or Jaguar as having been subsequently exported from the U.S. or its territories. Vehicles cannot be exported (date of shipment from the U.S. or its territories) within **12 months** from the new vehicle retail date.

The following vehicles will not be considered an export (i) totaled, flooded, or salvaged vehicles; (ii) vehicles repurchased with JLRNA assistance; or (iii) VINs that can be proven to remain in the U.S. or its territories.

POLICY IMPLEMENTATION

This Amendment is retroactive to November 24, 2014. All retailers who exceed their annual 2015 export threshold will be subject to an audit. Beginning on January 1, 2016, JLRNA will measure retailers against their quarterly export threshold in auditing retailers.

All other provisions of the November 24, 2014 Export Policy remain in effect.



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RETAILER DUE DILIGENCE AND BEST PRACTICES

In an effort to assist retailers, JLRNA strongly recommends the following steps in identifying potential exporters:

Search Known Exporters

- Search all customer information (including names and addresses) against JLRNA's Known Exporter List
- Execute searches for all parties who may be involved with the transaction including individuals, companies, lessors, lessees, company owners, drivers, etc.
- Search any alternate phone numbers captured from Caller ID
- Search any old addresses identified on documents or credit reports
- Search same information against other OEM export lists to which you may have access

Search Vehicle Purchase History

- Search all customer information (including names, addressed and phone number) against JLRNA's Sales History list
- Identify recent sales of like models
- Research past sales through DDW and Carfax, as appropriate, and be wary of cars with little to no service history, milestones and/or mileage
- Cross reference and re-search any names associated with successful searches

Learn More about Your Customer

- Search for the customer online via Google or Bing
- Determine whether you can confirm personal details which they may have conveyed about their address or employment
- Search for the customer's LinkedIn or Facebook pages which may reveal more about them
- Look for any connections to businesses (especially automotive industry or international) which they may have failed to disclose
- Run a Carfax report on all vehicles listed on the customer's insurance card. This may reveal other vehicles on the insurance that may have been exported
- Check the expiration date on the customer's insurance card to make sure the vehicle will be insured for an adequate period of time. For example, an insurance card for a short period of time, such as a month, may indicate a customer's intent to export the vehicle.

Validate Addresses

- Search and validate all customer addresses through Google Maps (Street View)
- Identify addresses that do not match details provided by the customer



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Validate IP Addresses

- Identify Internet Protocol (IP) address associated with leads and e-mails submitted by the customers
- Search the IP Address through online search tools such as whatismyipaddress.com to identify sources which do not match details provided by the customers
- Ask your website provider or lead provider to convert the IP address into the city/state that the inquiry originated from.

Confirm Financials

- When necessary, contact the financial institution to confirm that funding source matches the end-user customer
- Ensure the customer's name appears on the remitter line of a check
- Determine whether funding of customer's account was recent
- Determine whether source of customer's funding was from outside the U.S.
- If you receive customer funds by international wire, consider asking the customer additional questions regarding the funding source and whether the funds originated from an unrelated third party.

Validate Companies

- For any company involved in a transaction, search for a presence on the Internet
- Visit any company websites and validate addresses
- Look on business sites for any related companies, and research those as being related to the transaction (Known Exporter List, Purchase History, etc.)
- Conduct searches within your state or BBB to identify history, validity and nature of company

Validate Leasing Agents

- Be wary of leasing companies who operate in your area, yet with whom you have never done business with
- Research the history of any cars sold previously to the same leasing company in order to identify potential exports
- Acquire and retain a copy of the vehicle lease agreement between any third party leasing company and the end-user
- Research the leasing company just like any other potential buyer
- Handle the title and registration obligations for the end-user, and ensure that names match the end-user
- Ensure that you follow the requirement to conduct the handover directly with the end-user and not with a representative of the leasing company



Jaguar Land Rover North America, LLC

Follow Documentation and Handover Requirements

- Acquire and maintain a copy of the Driver's License for the end-user
- Ensure that you registered and titled the vehicle for end-user by the retailer and retain proof of registration in the deal jacket.
- Conduct the handover directly with the end-user in person and acquire end-user signatures (Sales Contract, Bill of Sale, etc.) to document that fact
- Collect and document the collection of Sales Tax on every transaction, even those with tax exempt status
- Ensure that the information on the title, registration and insurance all match the end-user and the information provided by that customer during the sales process

Utilize No-Export Agreements and Non-Financial Liens

- Consult with your Legal Counsel to draft an agreement for the customer to sign indicating that they will not export a vehicle and acknowledging their understanding of the impact (charges, etc.) of doing so
- Law enforcement agencies have informed JLRNA that these types of No-Export Agreements have been helpful in prosecuting exporters who break the law
- Consult with your Legal Counsel to apply and perfect a non-financial lien on any cash transaction purchase allowing you to hold the title (in states where legal) for 12 months and take all necessary steps to perfect and enforce such lien, significantly hampering the ability to export. Be wary of a customer who balks at signing the non-financial Lien and then quickly switches to lease or finance to avoid the Lien.

Recognize Employee Patterns

- Use available data from JLRNA to identify patterns within your individual sales staff members that may indicate an issue such as a higher percentage of exported vehicles, a propensity to sell multiple cars to single individuals or groups, or a pattern of selling cars well outside the retailer's geographic area



Jaguar Land Rover North America, LLC

INDICATORS OF POTENTIAL EXPORT OR BROKER BEHAVIOR

There are red flags that retailers and their employees should recognize as having a high risk for being an export or broker transaction. JLRNA would like share the following indicators of possible exporter or broker behavior:

- The buyer purchases a vehicle with a wire transfer, cashier's check or a certified check. If a certified check is used, you may want to see if it is from an unrelated payer or third party
- The buyer generally does not negotiate on the vehicle's price or pay below MSRP
- The buyer typically purchases more than one vehicle over a short period of time
- The sales information provided by a buyer may not match the registration information for the vehicle
- The end user's address provided by a buyer may be in an unassigned territory
- The buyer may be from a great distance away and be from a state where there is no sales tax upon registering a new vehicle
- The buyer may not visit the retailer in person and may contact the retailer solely through phone or e-mail
- The buyer may use an agent or assistant who claims to be handling the details of the transaction for their "boss"
- The buyer may indicate that the retailer has a rare car that they claim they want and cannot find elsewhere in the country
- The customer may ask for the vehicle to be trucked (delivered) to their location
- The customer may not want to register the car through the retailer and may even ask for the MSO
- The buyer wishes to use their own broker or leasing company rather than one familiar to the retailer
- The buyer may be willing to take any equipment and color
- The buyer does not have a U.S. Driver's License
- The buyer may ask for detailed spec sheets before seeing (or without intending to see or drive) the actual car



Jaguar Land Rover North America, LLC

- Buyers set up companies (including leasing companies) which exist only on paper (i.e. have no Internet or physical presence) in order to support their purchase story
- Buyers set up fake websites in order to support their purchase story
- Buyers state that they will finance or lease a car and then switch to pay in full with a check at the last minute

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In the Matter of the Protest of:
California New Car Dealers Association vs. Jaguar Land Rover North America, LLC
Protest No. _____

PROOF OF SERVICE

I am a citizen of the United States. My business address is Arent Fox LLP, 555 West Fifth Street, 48th Floor, Los Angeles, California 90013-1065. I am employed in the County of Los Angeles, where this service occurs. I am over the age of 18 years, and not a party to the within cause.

On the date set forth below, according to ordinary business practice, I served the foregoing document(s) described as:

PROTEST PURSUANT TO VEHICLE CODE SECTION 3085

- ☐ (BY FAX) I transmitted via facsimile, from facsimile number 213.629.7401, the document(s) to the person(s) on the attached service list at the fax number(s) set forth therein, on this date before 5:00 p.m. A statement that this transmission was reported as complete and properly issued by the sending fax machine without error is attached to this Proof of Service.
- ☒ (BY E-MAIL) On this date, I personally transmitted the foregoing document(s) via electronic mail to the e-mail address(es) of the person(s) on the attached service list (New Motor Vehicle Board Only).
- ☒ (BY MAIL) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business. On this date, I placed the document(s) in envelopes addressed to the person(s) on the attached service list (Jaguar Land Rover North America, LLC Only) and sealed and placed the envelopes for collection and mailing following ordinary business practices.
- ☒ (BY OVERNIGHT DELIVERY) On this date, I placed the documents in envelope(s) addressed to the person(s) on the attached service list (New Motor Vehicle Board Only), and caused that envelope to be delivered to an overnight delivery carrier, Federal Express, with delivery fees provided for, for next-business-day delivery to whom it is to be served.
- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 9, 2016 at Los Angeles, California.


LouAnn Crosby

1 In the Matter of the Protest of:
2 California New Car Dealers Association vs. Jaguar Land Rover North America, LLC
3 Protest No. _____

4 **SERVICE LIST**

5 New Motor Vehicle Board
6 1507 21st Street, Suite 330
7 Sacramento, California 95814
8 Telephone: (916) 445-1888
9 Facsimile: (916) 323-1632
10 Email: nmvp@nmvp.ca.gov

Via Email and Overnight Mail

11 Jaguar Land Rover North America, LLC Respondent
12 555 MacArthur Boulevard
13 Mahwah, New Jersey 07430
14 Telephone: (210) 818-8500
15 Facsimile:
16 Email: